



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

MEMORANDUM

To: Interested Parties
From: Jonathan Wayne, Executive Director
Date: June 1, 2012
Subject: Invitation to Comment on Revised Rule Interpreting Press Exception

The Commission is inviting additional comments on a proposed rule that would interpret the *existing* exception in campaign finance statutes for publishers of news stories, commentary, or editorials. (21-A M.R.S.A. §§ 1012(3)(B)(1) & 1052(4)(B)(1)) Because of this “press exception,” the costs of broadcast stations and publishers for news stories, commentary, and editorials are exempt from campaign finance regulation. So, for example, a television station in Bangor, Maine would not have to file independent expenditure reports or political action committee reports with the Commission due to broadcasting news stories or commentaries supporting or opposing legislative candidates in the Bangor area.

The statutory exception does not apply if the broadcast station is owned or controlled by “any” candidate or by a member of a candidate’s immediate family. The Commission would appreciate your comments on any aspect of the rule, including

- (1) If a broadcast station or publication were owned by a candidate or an immediate family member of the candidate, should the costs of news stories or editorials be exempt if they relate to election races *other than* the one in which the candidate-owner is running?
- (2) Should the Commission adopt a rule similar to the attached Federal Election Commission (FEC) rule that the costs of bona fide news stories are exempt if they are part of a pattern of campaign-related news accounts that provides reasonably equal coverage to all candidates in the race?
- (3) Can the Commission’s rule interpret the statutory phrase “broadcast station” to exempt cable television operators, programmers and producers (as the FEC has)?

Please send any comments by e-mail to Jonathan.Wayne@maine.gov or by mail to Maine Ethics Commission, 135 State House Station, Augusta, ME 04333. We request that comments be submitted by 4:00 p.m. on Friday, July 6, 2012. These will be posted at www.maine.gov/ethics. Any person who wishes to submit supplemental comments in response may do so by the final comment deadline of Wednesday, July 11, at 5:00 p.m. The Commission will *not* be holding a public hearing to receive comments. The Commission expects to complete the rulemaking at a meeting on July 25, 2012. Thank you.

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

SECTION 7. EXPENDITURES

...

10. **Press exemption.** In order for the costs of preparing and disseminating a news story, commentary, or editorial to be exempt from the definitions of expenditure under the press exemption [§§ 1012(3)(B)(1) & 1052(4)(B)(1)], the following criteria must be met:

- a. the names of the persons or entities who own, control and operate the broadcasting station or publication are identified within the publication or otherwise made known to the public;
- b. the broadcasting station or publication and the individuals or entities described in paragraph a of this subsection are not compensated for or reimbursed for expenditures by a candidate, candidate's authorized campaign committee, political party, political action committee, or ballot question committee, or their agents, except in exchange for providing advertising time or space to the candidates or committees; and
- c. the broadcasting station or publication is not owned or controlled by any political party, political action committee or ballot question committee and is not owned or controlled by any candidate, or authorized campaign committee of the candidate, who is a subject of the news story, commentary, or editorial, or by a member of the immediate family of such a candidate; except that
 - i. the cost of a bona fide news story appearing in a publication of general circulation or on a broadcasting station that is part of a pattern of campaign-related news coverage that provides reasonably equal coverage to all opposing candidates, is not an expenditure; and
 - ii. the cost of commentary and editorials about other candidates who are not in the same race as the candidate is not an expenditure.

In addition to the above criteria, to qualify as a periodical publication, including one in electronic form on the Internet, or a newspaper or magazine, a publication (i) must have been disseminating news stories, commentaries or editorials on a variety of topics to the general public on a periodic basis for at least the previous twelve months, or (ii) must have a record of disseminating news stories, commentaries or editorials on a variety of topics to the general public that objectively indicates that the publication will continue to be published on a periodic basis beyond the election cycle during which the press exemption is claimed.

EXISTING EXCEPTIONS FOR THE PRESS IN FEDERAL AND MAINE LAW

Maine Campaign Finance Statute

The term "expenditure:" ... [i]ncludes ... [a] purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office (21-A M.R.S.A. § 1012(3)(A)(1))

The term “expenditure:” ... [d]oes not include: ... [a]ny news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate, or candidate’s immediate family (21-A M.R.S.A. § 1012(3)(B)(1))

Federal Election Campaign Act

The term ‘expenditure’ does not include ... any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate” (2 U.S.C. § 431(9)(B)(i))

Federal Election Commission Regulation

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the cost for a news story:

- (a) That represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility; and
- (b) That is part of a general pattern of campaign-related news account that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not an expenditure. (11 C.F.R. § 100.132)